

Guy W. Parker  
14924 Conchos Dr.  
Poway, CA 92064  
858-486-6469

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

Guy W. Parker,

Plaintiff,

vs.

Betty W. Clingerman,

Defendant

) Case No.: 3:08-cv-00212-L-WMC

) Pure Bill of Equitable Discovery  
) Affidavit 2 in Support of Default

1) Complaint 3:08-cv-00212-L-WMC Pure Bill of Equitable Discovery is a request for documents required to be made readily available (due process) on demand to the public and government agencies by Public Law 95-563 and Federal Acquisition Regulation 1.602-1.

2) The required documents determine if Betty W. Clingerman has Individual Capacity or Official Capacity as the Public Law 95-563 (amended) Contracting Officer in Contract FA862104D6250, or, in the alternative, if Betty W. Clingerman was/is operating outside of written delegated contract authority in Personal Capacity in Contract FA862104D6250.

08CV0212

3) Apparent Individual Capacity or Apparent Official Capacity exists in commercial contracting. No Apparent Individual Capacity or Apparent Official Capacity exists in government public contract law federal acquisition procurements. In government public contract law federal acquisition procurements Individual Capacity and Official Capacity is required to be explicitly stated through explicit written delegated authority in documents required to be readily available and produced to the public and government agency on demand and are explicit for each specific federal acquisition procurement contract. A mutually signed SF26 Contract FA862104D6250 document between Guy W. Parker and Betty W. Clingerman does not exist. Betty W. Clingerman is not the SF26 Contracting Officer of Record for Public Law 95-564 (amended). Betty W. Clingerman has no legal status in Individual Capacity or Official Capacity in Contract FA862104D625.

4) Betty W. Clingerman is not the SF26 Contracting Officer of Record (Blocks 20A and 20B on SF26) for Contract FA862104D6250 as required by Public Law 95-563 (amended) and Federal Acquisition Regulations 1.603-1 as stated in 41 U.S.C. 414(b)(4) making acquisition decisions consistent with all applicable laws and establishing clear lines of authority, accountability, and responsibility for acquisition decision making within the executive agency.

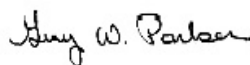
5) Betty W. Clingerman can be held personally liable for her actions outside of delegated authority. There are severe consequences for all parties involved with unauthorized commitments. Unauthorized commitments may result in personal liability for the individual who made the commitment. Contractors who act on unauthorized commitments do so at their own risk. Personal Liability exists for contractors and federal employees in federal procurements.

08CV0212

6) FAR 1.602-1: (a) Contracting officers may bind the Government only to the extent of the authority delegated to them. Contracting officers shall receive from the appointing authority clear instructions in writing regarding the limits of their authority. Information on the limits of the contracting officers' authority shall be readily available to the public and agency personnel.

7) Betty W. Clingerman has not been named as a federal employee in Individual or Official Capacity by this plaintiff in Case 3:08-cv-00212-L-WMC. Betty W. Clingerman has been named in Personal Capacity. No contractual relationship is required for a FAR 1.602-1 request for information on the limits of the contracting officers' authority. A US Attorney is required to secure the requested documents to establish their delegated authority to assert their legal standing. The documents are required to be readily available to the public and government agencies, including the agency US Department of Justice. A short Answer to the Complaint is required that provides the credentials that substantiate Individual Capacity or Official Capacity. Apparent Individual Capacity or Apparent Official Capacity cannot be presumed in government public contract law federal acquisition procurements.

8) I declare that all statements I made are true, accurate, and correct to the best of my knowledge. There are three one page documents following this signature block: 1) Unauthorized Commitments, Personal Liability; 2) Are You Operating Outside of Your Realm of Authority; 3) Hypothetical Statements Proposed by a US Attorney Without Notice of Appearance.



Dated this March 12, 2008  
/s Guy W. Parker  
14924 Conchos Dr.  
Poway, CA 92064  
858-486-6469

08CV0212

## Unauthorized Commitments

### Personal Liability for the Individual Who Made the Commitment

An "unauthorized commitment" is defined in FAR 1.602-3(a) as "an agreement that is not binding solely because the Government representative who made it lacked the authority to enter into that agreement on behalf of the Government." The only individuals who can bind the Government are warranted contracting officers and purchase cardholders acting within the limits of their delegated authority. Unauthorized commitments violate Federal law, Federal regulation, the Government-wide Standards of Conduct for Federal Employees, and Department of State Acquisition Regulations.

Examples of unauthorized commitments include:

§ Supplies or services are ordered by someone not named on a purchase card or identified in a contract or blanket purchase agreement. Note: A funding document is not a contractual document.

§ Contractor starts work before the contractual document is issued or awarded by a CO.

§ An invoice is received from a contractor, but no purchase order or contract exists for the items or work described in the invoice.

§ Purchase cardholder exceeds single purchase limitation without proper authorization/delegation of authority.

**There are severe consequences for all parties involved with the unauthorized commitment. Unauthorized commitments may result in personal liability for the individual who made the commitment.**

Personnel responsible for unauthorized commitments are required to give detailed written explanations of their actions and may be subject to disciplinary action, especially if violations are flagrant and/or repetitive.

**Contractors who act on unauthorized commitments do so at their own risk. They are not entitled to consideration (money) unless and until the unauthorized commitment is ratified. Payment is therefore substantially delayed or may not be forthcoming at all if the action is not ratified or costs are not recognized.**

The process whereby designated individuals convert an unauthorized commitment to a legal contract is called ratification. Under the Department of State Acquisition Regulation (DOSAR), the Head of the Contracting Activity has been delegated authority to ratify unauthorized commitments not exceeding \$1,000. The Procurement Executive must ratify any commitment exceeding \$1,000. Ratifications may only occur when all the regulatory requirements or conditions have been met. Contracting officers do not have the authority to simply issue a purchase order or contract modification when an unauthorized commitment has been identified.

08CV0212

## **Are You Operating Outside of Your Realm of Authority?**

*Here Are a Few Key Questions to Ask Yourself...*

\_\_Have you placed orders [or entered into discussions] with Contractor(s) without a valid contractual instrument in place?

\_\_Have you directed any Contractors to do additional work in excess of the contract value? Or work beyond the period of performance?

\_\_Have you authorized new work to the contract without notifying the Contracting Officer or having a modification in place?

\_\_Have you directed the Contractor in any way that could change the terms and conditions of the contractual instrument or be deemed outside of the scope of work?

*If you answered, "yes" to any of the questions then you may have entered into an unauthorized commitment.*

If such an action has occurred the unauthorized commitment must go through a ratification process.

### **What is an Unauthorized Commitment?**

An agreement that is not binding because the Government representative who made it lacked the authority to act on behalf of the Government. *Unauthorized commitments are subject to disciplinary action, and the individual committing the act can be held financially responsible.*

### **What is Ratification?**

The act of approving an unauthorized commitment by a ratifying official who has the authority to do so. **Note: *Requests for ratifications are not always approved.***

08CV0212

## Hypothetical Statements Proposed by a US Attorney Without Notice of Appearance

- 1) USDOJ: "This action is a contract dispute in which Plaintiff Guy Parker seeks certain documents to which he claims he is entitled pursuant to a previous contractual relationship with the United States Air Force (hereafter "USAF")."

**Answer:** FAR 1.602-1: (a) Contracting officers may bind the Government only to the extent of the authority delegated to them. Contracting officers shall receive from the appointing authority (see 1.603-1) clear instructions in writing regarding the limits of their authority. **Information on the limits of the contracting officers' authority shall be readily available to the public and agency personnel.**

- 2) USDOJ: "In his lawsuit, Plaintiff has improperly named Bettie Clingerman, a federal employee, as a defendant in her individual capacity." "Moreover, Plaintiff seeks only information related to his dealings with the USAF or USAF employees acting in their official capacities." "In fact, Plaintiff's Complaint is premised upon a contractual relationship that he had with the USAF."

**Answer:** Betty W. Clingerman **has not been named** as a federal employee in Individual or Official Capacity. Betty W. Clingerman has been named in Personal Capacity. No contractual relationship is required for a FAR 1.602-1 request for information on the limits of the contracting officers' authority.

- 3) USDOJ: "Plaintiff's own Complaint identifies Ms. Clingerman in her official capacity as a possible USAF Contract Officer of Record, and makes reference to Ms. Clingerman being employed by the United States Government. (Plaintiff's Complaint at 1-6 and 1-9)"

**Answer:** Complaint at 1-6 and 1-9 does not name Betty W. Clingerman in Individual or Official Capacity, no such capacity exists in Contract FA862104D6250.

- 4) USDOJ: "Accordingly, Plaintiff's Complaint should properly be directed only at federal employees in their official, not individual, capacity."

**Answer:** A hypothetical statement. The US Attorney is required to secure the requested documents to establish their delegated authority to assert their legal standing. **Personal Liability exists in federal procurements.**

08CV0212